

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically on July 29, 2019, which may be different from its entry on the record.

**IT IS SO ORDERED.**

**Dated: July 29, 2019**



  
ARTHUR I. HARRIS  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE RICHARD M. OSBORNE, SR.  
*Debtor*

CASE NO. 17-17361  
JUDGE ARTHUR I. HARRIS  
CHAPTER 7

**SECOND AGREED INTERIM ORDER GRANTING EMERGENCY MOTION OF DEBTOR RICHARD M. OSBORNE, SR. FOR IMMEDIATE TURNOVER OR RELEASE OF PERSONAL INCOME AND SOCIAL SECURITY PAYMENT**

Before the Court is the Emergency Motion of Debtor Richard M. Osborne, Sr. for Immediate Turnover or Release of Personal Income and Social Security Payment [Doc. 493] (“Motion” and “Debtor”) and the Limited Objection thereto (the “Objection”) [Doc. 503] filed by Kari B. Coniglio, the Interim Chapter 7 Trustee (the “Trustee”) and the objection raised by Citizen Bank, N.A. at the hearing on the Motion, which was held on July 16, 2019 at 10:00 AM, and set for further hearing on July 30, 2019 at 10:00 AM, the Chapter 7 Trustee, Citizens Bank, N.A. and the Debtor agreeing to the entry of this Order, the Court finds and orders as follows:

**THE COURT FINDS:**

A. The Debtor asserts that he receives as personal income \$2,637 in Social Security payments (the “Social Security Payments”), \$5,000 per month from the Estate of Jerome T

Osborne, Sr. (“JTO Estate”) for his services as a co-executor of that estate (the “Administration Payments”), and \$12,500 per month payable from the JTO Estate to his wholly owned company 5580 Woodside LLC (the “Woodside Payments”) for acting as the real estate manager to the JTO Estate.

B. The Trustee disputes the Debtor’s characterizations of the Administration Payments and the Woodside Payments as exempt from the estate as “personal income” or “earnings”; however, the Trustee concedes that the Social Security Payments are exempt from her administration.

C. The Debtor asserts that his Social Security Payments are automatically deposited into a checking account at Erie Bank with the last four digits of 5299 (the “Personal Account”). The Debtor also asserts that the Administration Payments were deposited into the DIP account and the Woodside Payments are deposited into another checking account at Erie Bank in the name of that entity (the “Woodside Account”) on a monthly basis. The Debtor asserts he is still owed \$4,576.61 from the estate for the July Administration Payment deposited into the DIP account just prior to the conversion of the case to Chapter 7;

D. On or about July 5, 2019, the Debtor deposited \$11,291.25 into the Personal Account from a check drawn on the Woodside Account, an amount which the Debtor claims represents the post-conversion balance of the Woodside Payment due to the Debtor for the month of July.

E. The Trustee disputes the Debtor’s entitlement to any portion of the Woodside Payments for July 2019.

F. The Debtor also attempted to deposit \$4,516.50 drawn on a check from a debtor-in-possession account maintained by him at the Huntington National Bank (the “DIP Account”) into the Personal Account; however, that check did not clear the DIP Account and thus the deposit was not consummated.

G. Both the Personal Account and the DIP Account are presently frozen by the respective banks upon the direction of the Trustee.

H. Notwithstanding their differences as to the characterization of the funds in question, the Trustee and the Debtor reached an interim agreement regarding a release of the freeze from the Personal Account, as set forth in the Agreed Order Granting in Part and Adjourning in Part the Emergency Motion of Debtor Richard M. Osborne, Sr. for Immediate Turnover or Release of Personal Income and Social Security Payment [Doc. 517].

I. The Trustee and the Debtor have reached further resolution regarding a release of the freeze from the Personal Account, subject to the reservations and protections set forth herein and the Office of the United States Trustee and Citizens Bank, N.A. have expressed no objections to the agreement set forth herein.

THE COURT ORDERS:

1. The hearing on July 30, 2019 at 10:00 AM is cancelled;
2. Erie Bank is hereby authorized and directed to release the freeze of all funds in the Personal Account subject to the conditions set forth herein;
3. The Debtor may deposit his Social Security Payments, the Administration Payments, and the Woodside Payments into the Personal Account and may make withdrawals from the Personal Account provided he is not in breach of the terms of this Agreed Order;
4. The Debtor and Erie Bank shall cause the Trustee to be added as a mailing party to the Debtor's Personal Account so as to ensure the Trustee receives mail service of the monthly statements for the Personal Account until written notice from the Trustee or further order from this Court;
5. The Trustee's rights to dispute, and the Debtor's assertion of, the characterization of the Administration Payments and the Woodside Payments and the rights of either the Trustee or the Debtor to seek turnover of any portion of the Administration Payments and the Woodside

Payments from either party are both hereby expressly preserved.

6. If a further hearing is needed on this matter either party may request one from the Court.

Prepared by,  
/s/ Frederic P. Schwieg  
Frederic P. Schwieg, Esq. (0030418)  
Attorney at Law  
2705 Gibson Dr  
Rocky River, OH 44116  
(440) 499-4506  
(440) 398-0490  
fschwieg@schwieglaw.com  
Attorney for Debtor

Agreed to by:  
/s/ Kari B. Coniglio  
Kari B. Coniglio (0081463)  
Interim Chapter 7 Trustee  
200 Public Square, Suite 1400  
Cleveland, OH 44114  
Tel (216) 479-6167  
Fax (216) 937-3766  
kbconiglio@vorys.com

###

No Objection:  
/s/ Maria D. Giannirakis  
Maria D. Giannirakis (0038220)  
U.S. Department of Justice  
Office of the U.S. Trustee  
Metzenbaum U.S. Courthouse  
201 E. Superior Ave., Ste. 441  
Cleveland, Ohio 44114-1240  
(216) 522-7800, ext. 222  
maria.d.giannirakis@usdoj.gov  
No Objection:  
/s/ Michael S. Tucker  
Michael S. Tucker (0034398)  
Ulmer & Berne LLP  
1660 West 2nd Street, Suite 1100  
Cleveland, Ohio 44113-1448  
(216) 583-7120  
(216) 583-7121 Fax  
[mtucker@ulmer.com](mailto:mtucker@ulmer.com)  
Counsel for Citizens Bank, N.A.

### **SERVICE**

Gregory P. Amend on behalf of Creditor First National Bank of Pennsylvania  
gamend@bdblaw.com, grichards@bdblaw.com

Alison L. Archer on behalf of Interested Party Lakeland Community College  
alison.archer@ohioattorneygeneral.gov, Trish.Lazich@ohioattorneygeneral.gov; angelique.dennis-noland@ohioattorneygeneral.gov

Richard M. Bain on behalf of Interested Party Zachary B Burkons  
rbain@meyersroman.com, mnowak@meyersroman.com; jray@meyersroman.com

Adam S. Baker on behalf of Creditor Michael E. Osborne, Sr.  
abakerlaw@sbcglobal.net, adam@bakerlaw.us; abakerlaw@gmail.com

Austin B. Barnes, III on behalf of Creditor Tax Ease Ohio, LLC  
abarnes@sandhu-law.com, bk1notice@sandhu-law.com

Robert D. Barr on behalf of Creditor Chicago Title Insurance Company  
rbarr@koehler.law, rbarr@koehler.law

David T. Brady on behalf of Creditor Tax Ease Ohio, LLC  
DBrady@Sandhu-Law.com, bk1notice@sandhu-law.com

Kari B. Coniglio  
kbconiglio@vorys.com, mdwalkuski@vorys.com; kbc@trustesolutions.net; jncash2@vorys.com

LeAnn E. Covey on behalf of Creditor Bank of America, N.A.  
bknotice@clunkhooose.com

Richard W. DiBella on behalf of Creditor Nationwide Mutual Fire Insurance Company  
rdibella@dgmblaw.com

Stephen R. Franks on behalf of Creditor Bank of America, N.A.  
amps@manleydeas.com

Stephen John Futterer on behalf of Creditor City of Willoughby  
sjfutterer@sbcglobal.net, r43087@notify.bestcase.com

Melody Dugic Gazda on behalf of Plaintiff Home Savings Bank  
mgazda@hendersoncovington.com

Melody Dugic Gazda on behalf of Respondent Home Savings Bank, Successor by Merger to The Home Savings & Loan Company of Youngstown, Ohio  
mgazda@hendersoncovington.com

Michael R. Hamed on behalf of Interested Party Gas Natural Inc.  
mhamed@kushnerhamed.com, kgross@kushnerhamed.com

Heather E. Heberlein on behalf of Creditor First National Bank of Pennsylvania  
hheberlein@bdblawn.com, vgum@bdblawn.com

Dennis J. Kaselak on behalf of Claimant Diane M. Osborne  
dkaselak@peteribold.com, Cynthia@peteribold.com

Dennis J. Kaselak on behalf of Defendant Diane M. Osborne  
dkaselak@peteribold.com, Cynthia@peteribold.com

Christopher J. Klym on behalf of Creditor Ohio Department of Taxation  
bk@hhkwlaw.com

Jerry R. Krzys on behalf of Plaintiff Home Savings Bank  
jkrzys@hendersoncovington.com, jerrykrzys@gmail.com

Matthew H. Matheney on behalf of Creditor First National Bank of Pennsylvania  
mmatheney@bdblawn.com, bhajduk@bdblawn.com

Shannon M. McCormick on behalf of Creditor Center Street School Condominiums and coachhouses Unit Owners' Association, Inc.  
bankruptcy@kamancus.com

Kelly Neal on behalf of Creditor The Huntington National Bank  
kelly.neal@bipc.com, donna.curcio@bipc.com

David M. Neumann on behalf of Interested Party Zachary B Burkons  
dneumann@meyersroman.com, jray@meyersroman.com; mnowak@meyersroman.com

Timothy P. Palmer on behalf of Creditor The Huntington National Bank  
timothy.palmer@bipc.com, donna.curcio@bipc.com

Tricia L. Pycraft on behalf of Accountant Rea & Associates, Inc.  
tpycraft@ccj.com, bowman@ccj.com

Kirk W. Roessler on behalf of Creditor Estate of Jerome T. Osborne  
kroessler@walterhav.com, kballa@walterhav.com; slasalvia@walterhav.com

Kirk W. Roessler on behalf of Creditor Osborne Farms, LLC fka Huron Lime Company, LLC  
kroessler@walterhav.com, kballa@walterhav.com;slasalvia@walterhav.com

John J. Rutter on behalf of Creditor Mentor Lumber & Supply Co.  
jrutter@ralaw.com

Frederic P. Schwieg on behalf of Attorney Frederic P. Schwieg  
fschwieg@schwieglaw.com

Frederic P. Schwieg on behalf of Cross-Claimant Richard M. Osborne  
fschwieg@schwieglaw.com

Frederic P. Schwieg on behalf of Debtor Richard M. Osborne  
fschwieg@schwieglaw.com

Frederic P. Schwieg on behalf of Defendant Richard M. Osborne  
fschwieg@schwieglaw.com

Michael J. Sikora, III on behalf of Creditor Chicago Title Insurance Company  
msikora@sikoralaw.com, aarasmith@sikoralaw.com

Nathaniel R. Sinn on behalf of Creditor First National Bank of Pennsylvania  
nsinn@bdblawn.com, grichards@bdblawn.com

Rachel L. Steinlage on behalf of Interested Party Zachary B Burkons  
rsteinlage@meyersroman.com, jray@meyersroman.com;mnnowak@meyersroman.com;rbain@meyersroman.com

Richard J. Thomas on behalf of Plaintiff Home Savings Bank  
rthomas@hendersoncovington.com, mgazda@hendersoncovington.com

Andrew M. Tomko on behalf of Creditor Tax Ease Ohio, LLC  
atomko@sandhu-law.com, bk1notice@sandhu-law.com

Jeffrey C. Toole on behalf of Interested Party Zachary B Burkons  
toole@buckleyking.com, young@buckleyking.com

Michael S. Tucker on behalf of Creditor Citizens Bank, N.A.  
mtucker@ulmer.com

Phyllis A. Ulrich on behalf of Creditor The Huntington National Bank  
bankruptcy@carlisle-law.com, bankruptcy@carlisle-law.com

Leslie E. Wargo on behalf of Cross-Claimant Richard M. Osborne  
Leslie@Wargo-Law.com

Leslie E. Wargo on behalf of Debtor Richard M. Osborne  
Leslie@Wargo-Law.com

Maria D. Giannirakis ust06 on behalf of U.S. Trustee United States Trustee  
maria.d.giannirakis@usdoj.gov

Scott R. Belhorn ust35 on behalf of U.S. Trustee United States Trustee  
Scott.R.Belhorn@usdoj.gov